#### ELLEN YAROSHEFSKY

Howard Lichtenstein Distinguished Professor of Legal Ethics
Executive Director of the Monroe Freedman Institute for the Study of Legal Ethics
Maurice A. Deane School of Law
Hofstra University
121 Hofstra University
Hempstead, NY 115549
(516) 463-5882
yaroshef@hofstra.edu

## **ACADEMIC EMPLOYMENT**

# Hofstra University School of Law

2016-

Present

Howard Lichtenstein Distinguished Professor of Legal Ethics

Executive Director of the Monroe H. Freedman Institute for the Study of Legal Ethics

Teaches a range of courses in Legal Ethics, Criminal Procedure, Access to Justice

Develop symposia and ethics programs

Directs the Freedman Fellowship Program

# Benjamin N. Cardozo School of Law

1994-2016

Executive Director, Jacob Burns Ethics Center in the Practice of Law

Clinical Professor of Law

Taught a range of courses in Legal and Judicial Ethics, Evidence, and Wrongful Convictions

Youth Justice Clinic

Developed symposia and ethics programs

Directed and taught Cardozo's Intensive Trial Advocacy Program

Columbia Law SchoolSpring 2014Adjunct Professor of LawSpring 2015

Course: Professional Responsibility

Fordham School of Law
Adjunct Professor of Law
Fall 2010

Course: Ethics in Criminal Advocacy

Standards of Attorney Conduct (COSAC)

## PROFESSIONAL SERVICE

New York State Bar Association Committee on 2003-

New York County Lawyers Association 2008

New York County Lawyers Association 2008-Professional Ethics Committee

New York Civil Liberties Union Board Member	2015-
National Association of Criminal Defense Lawyers Present Co-chair, Ethics Advisory Committee	2003-
New York State Bar Association Wrongful Convictions Task Force	2018-2019
New York County Lawyers Association Plea Bargaining Task Force	2018-2019
American Bar Association Executive Committee Criminal Justice Section Council	2017-
American Bar Association Criminal Justice Section Co-chair of Ethics, Gideon and Professionalism Committee	2006 -2014
Institute for the Innovation of Prosecution John Jay College of Criminal Justice	2016-2019
New York State Joint Commission on Public Ethics (JCOPE) Commissioner	2012-2014
Association of the Bar of the City of New York Criminal Courts Committee	2008-2011
New York County Lawyers Association Justice Center Advisory Board	2004 -2007
Association of the Bar of the City of New York Committee on Professional Responsibility	2002-2004 1994 -1998
National Conference of Bar Examiners MPRE Drafting Committee	2002
Center for Constitutional Rights Executive Committee Board Member	2001-2015
Legal Services for New York City LSNY Planning Process Advisory Committee	2001- 2002

#### **PUBLICATIONS**

Should Criminal Justice Reformers Care About Prosecutorial Ethics Rules? (with Bruce A. Green), Duquesne L. Rev. 58 Duquesne L. Rev. (forthcoming 2020)

The Relationship Between Prosecutors and Defenders, Ronald F. Wright, Kay L. Levine, and Russell Gold, eds., OXFORD HANDBOOK ON PROSECUTORS AND PROSECUTION (forthcoming 2020)

The Mueller Investigation and Legal Ethics, in The Mueller Investigation and Beyond, Ellen Podgor (ed.), (Carolina Academic Press, 2019)

Regulation of Lawyers in Government Beyond the Client Representation Role, 33 Notre Dame J. Law, Ethics & Pub. Policy 151 (2019)

Judge Damon Keith: the Antidote to Judge Julius Hoffman, 50 Loyola U. Chicago Law J. 989 (2019)

Towards the Model of the Engaged Judge, NYU Annual Survey of the Law (Invited Symposium on Sentencing Reform from the Bench: The Emerging Role of District Court Judges) 74 N.Y.U. Annual Survey American Law 393 (2018)

Can a Good Person Be a Good Prosecutor?, 87 Fordham Law Review Online (2018) https://fordhamlawreview.org/wp-content/uploads/2018/09/Yaroshefsky-35.pdf

Introduction, Movement Lawyering Roundtable Symposium, 47 Hofstra Law Review 1 (2018)

Privileging Public Defense Research, (with Janet Moore and Andrew Davies), 69 Mercer Law Review 769 (2018)

Ministers of Justice and Mass Incarceration, (with Lissa Griffin), 30 Georgetown J. Legal Ethics 301 (2017)

Prosecutorial Accountability 2.0, (with Bruce A. Green), 92 Notre Dame Law Review 51 (2016)

New Models for Prosecutorial Accountability, 2016 Cardozo Law Review de novo 132 (2016)

Duty of Outrage: The Defense Lawyer's Obligation to Speak Truth to Power to the Prosecutor and the Court When the Criminal Justice System is Unjust, 44 Hofstra Law Review 1027 (2016)

Changing the School to Prison Pipeline: Integrating Trauma Informed Care in the New York City School System, in Collected Essays Impact: Threat of Economic Inequality, (with Anna Shwedel), 1 N.Y Law School Impact Center for Public Service Law J. 99 (2015)

Ethical Issues in Class Action Representation, Institute for Law and Economic Policy Conference Materials (2015)

Waiting for the Elevator: Talking About Race, 27 Georgetown J. Legal Ethics 1023 (2014)

Defense Lawyering and Wrongful Convictions, (with Laura Schaefer), Allison D. Redlich, James R. Acker, Robert J. Norris & Catherine L. Bonventre (eds.), EXAMINING WRONGFUL CONVICTIONS: STEPPING BACK, MOVING FORWARD, Carolina Academic Press, (2014)

Ethics in Criminal Advocacy, The State of Criminal Justice 2013 (American Bar Association) (coauthored with Peter A. Joy)

50th Anniversary of Brady: Cognitive Bias and Beyond, The Champion, June 2013

New Orleans Prosecutorial Disclosure in Practice After Connick v. Thompson, 25 Georgetown J. Legal Ethics 913 (2012)

Ethics in Criminal Advocacy, The State of Criminal Justice 2012 (American Bar Association) (coauthored with Peter A. Joy)

*Prosecution Ethics in Context*, (with Bruce A. Green), Leslie C. Levin and Lynn Mather (eds.), LAWYERS IN PRACTICE University of Chicago Press (2012)

Prosecutorial Disclosure Obligations, 62 Hastings Law Journal 1321 (2011)

Ethics in Criminal Advocacy, The State of Criminal Justice 2011 (American Bar Association) (coauthored with Peter A. Joy)

Foreword: New Perspectives on Brady and Other Disclosure Obligations: What Really Works, 31 Cardozo Law Review 1943 (2010)

Enhancing the Justice Mission in the Exercise of Prosecutorial Discretion, 19 Temple Pol. and Civ. Rts. Law Review 343 (2010)

My Client, the Cooperator Lied: Now What? Commentary Symposium, Criminal Law Defense, Ethics, and the Client Who Plans to Lie, 7 Ohio St. J. Criminal Law 659 (2010)

Ethics in Criminal Advocacy, The State of Criminal Justice 2009 (American Bar Association) (coauthored with Peter A. Joy)

Prosecutorial Discretion and Post-Conviction Evidence of Innocence, (coauthored with Bruce A. Green), 6 Ohio State J. Criminal Law 467 (2009)

Ethics and Plea Bargaining, American Bar Association Criminal Justice Symposium (Fall 2008)

Ethics in Criminal Advocacy, (coauthored with Bruce A. Green) The State of Criminal Justice 2008 (American Bar Association)

Zealous Lawyering Succeeds Against All Odds: Major Mori and the Legal Team for David Hicks at Guantanamo Bay, Symposium Issue, 13 Roger Williams L. Rev. 469 (2008)

Military Lawyering at the Edge of the Rule of Law at Guantanamo: Should Lawyers Be Permitted to Violate the Law, 36 Hofstra Law Review 563 (2008)

State of Washington v. Sherrie Lynn Allery, Victory Despite Conviction, Michael E. Tigar and Angela J. Davis (eds.), TRIAL STORIES, 13 (2008)

Secret Evidence is Slowly Eroding the Adversary System, 34 Hofstra Law Review. 1063 (2006)

Classified Information and the Courts, Secret Evidence and the Courts in the Age of National Security, 5 Cardozo Public Law, Policy and Ethics Journal 1 (2006)

Conference Overview and Summary, The New York City Housing Court in the 21<sup>st</sup> Century, 3 Cardozo J. Pub. Policy, Law and Ethics Journal 591 (2006), (with Marilyn Flood)

Wrongful Convictions: It Is Time to Take Prosecution Discipline Seriously, Symposium, 8 U.D.C. Law Review 275 (2004)

Introduction to the Cooperating Witness Conundrum, 23 Cardozo Law Review 747 (2002)

Session Four: Special Issues in Assisted Settlement, A Symposium: Ethical Issues in Settlement Negotiations, 52 Mercer Law Review 947 (2001)

Unethical Clauses in Settlement Agreements, New York Employment Law and Practice Vol 2, No. 1 (2000)

Litigation Ethics: Course Materials for Continuing Legal Education, Materials on Client and Witness Perjury, ABA Section of Litigation (2000)

Cooperation with Federal Prosecutors: Experiences of Truth Telling and Embellishment, 68 Fordham Law Review 917 (1999)

Advertising: Targeted Mailings for Personal Injury and Criminal Clients, New York Professional Responsibility Reporter (June 1998)

How Future Lawyers Learn, Federal Bar Council News (1997)

Balancing Victim's Rights and Vigorous Advocacy for the Defendant, N.Y.U. Annual Survey of American Law 135 (1989)

The Tucson Trial and Its Legal Consequences of Asylum Seekers, 9 Proceedings of the National Legal Conference on Immigration and Refugees (1986)

# PRESENTATIONS IN PROFESSIONAL & ACADEMIC PROGRAMS (since 2003)

Best Practices, Ethical Considerations and Effective Use of Local Counsel, ABA Section of Litigation (5/19)

Special Counsel Investigations and Legal Ethics Roundtable, Duquesne University School of Law (1/19)

Women Defenders in the Courtroom: An Exploration of Identity and Effective Lawyering, National Association of Criminal Defense Lawyers (10/18)

The Use of Social Media and Its Legal Ethics, NYSBA CLE Program at Hofstra Law (10/18)

Ethical Rules, Guidelines and Practices for Use of Social Media, Federal Bar Council (6/18)

What Constitutes A Cert. Worthy Petition to the Supreme Court, Second Circuit Court, United States Courthouse (5/18)

One the Rocks: Hot Topic Ethical Issues, White Collar Seminar, National Association of Criminal Defense Lawyers (9/17)

Top Ten Ethical Rules for White Collar Lawyers, White Collar West Coast Conference, National Association of Criminal Defense Lawyers (6/17)

Ethical Issues in the Practice of Criminal Law, New York City Bar (5/17)

Current Ethics Issues in Commercial Litigation, Commercial and Federal Litigation Section, NY State Bar Association (5/17)

Ethical Issues in Mental Hygiene Legal Service, Second Department Continuing Legal Education Program (4/17)

Navigating Ethical Minefields in Antitrust Class Actions, 65th Annual Antitrust Law Spring Meeting (3/17)

Ethics and Professionalism: Best Practices for Attorneys 2017, New York City Bar (3/17)

Ethical Issues in the Practice of Law, The Presidential Inauguration and the Unfolding Era, City University of New York Law School (1/17)

New ABA Model Rule of Professional Conduct against Harassment and Discrimination: Understanding the Rule in Detail, Practicing Law Institute (12/16)

What's in a name? Or a Number?: Attorney Advertising and Ratings, New York State Bar Association (10/16)

Medical Marijuana in New York, New York State Bar Association (10/16)

30th Annual Metropolitan New York Trainer, New York University Law School (3/16)

Ethical Issues in Criminal Practice, The Legal Aid Society (12/15)

Twenty-Five Years of Wrongful Convictions Conference, Northeastern School of Law (9/15)

Ethics in Juvenile Defense, National Juvenile Defender Center, Georgetown Law School (4/15)

Navigating the Complex Ethical Issues, Cannabis Business, Law and Ethics (4/15)

Ethical Issues in Class Actions, Institute for Law and Economic Policy (4/15)

Legal and Ethical Obligations in Discovery, Public Defender of the Ninth Judicial Circuit (3/15)

Ethical Obligations of Judges and Prosecutors, ABA Tenth Annual Summit on Indigent Defense Improvement, Thurgood Marshall School of Law (2/15)

Ethical Issues in Indigent Immigration Cases, Brooklyn Defender Services (2/15)

Ethics in Forensic Science, Virtual Lunch Series, American Association of American Law Schools (12/14)

Ethics Seminar, White Collar Crime Seminar, National Association of Criminal Defense Lawyers (11/14)

Ethical Issues in Forensic Science, New York State Bar Association Criminal Justice Section Fall Meeting (10/14)

Protecting the Sixth Amendment 50 Years Later: Current Issues in Ethics and Technology, Second Circuit Judicial Council (6/14)

Ethical Obligations in Dealing with Child Victims: Role and Responsibilities of System Actors, American Bar Association Criminal Justice Section (5/14)

Ethical Issues for the Defense Relating to Forensic Science, 14<sup>th</sup> Annual Public Defender Retreat (4/14)

Race and Access to the Justice System, Georgetown University Law Center (3/14)

Ethical Choices in Dealing with Crime Victims: What is the Prosecutor, Defender and Judge to Do?

American Bar Association Criminal Justice Section (2/14)

Ethical Choices Regarding Discovery and Forensic Science, New York State Bar Association

Criminal Justice Section Fall Meeting (10/13)

Prosecutorial Disclosure Obligations, Fifth Circuit Judicial Conference (5/13)

Ethics in Plea Bargaining and Discovery, Chief Justice's Indigent Defense Summit, Virginia State Bar (5/13)

Basics of Criminal Law for the Criminal and Civil Lawyer, New York State Bar Association (4/13)

Criminal Law and Ethics: The Present State of Brady, A View from Both Sides, New York County Lawyers Association (4/13)

50<sup>th</sup> Anniversary of Gideon v. Wainwright, American Constitution Society, Cardozo Law School (3/13)

Gideon in the 21<sup>st</sup> Century, American Bar Association Criminal Justice Section Roundtable (2/13)

Workshop Presentation, The National Institute for Teaching Ethics and Professionalism (6/12)

Ethics and Open Source Software, Practicing Law Institute (11/11)

Challenging Ethical Dilemmas: Candor, Client Competency and the Use of Social Networking, New York County Lawyers Criminal Trial Advocacy Institute (11/11)

Legal and Ethical Implications for Defense Counsel, Prosecutors and the Court in Cutting Edge Forensic Science Issues: Discovery and Disclosure Obligations, New York State Bar Association (11/11)

Attorney Advertising, Social Media and Ethics, National Advertising Division Annual Conference (10/11)

Ethics for Corporate Counsel, New York State Bar Association Corporate Counsel Section (11/10)

Ethical Considerations for Using Technology in Your Practice American Bar Association Section on Litigation, 11<sup>th</sup> Annual Women in Product Liability Conference (11/10)

Prosecutorial Ethics, Sixth Annual Defending the White-Collar Case (9/10)

Ethical Issues in Prison Actions, Prison Law 2009, Practicing Law Institute (9/10)

Difficult Ethical Choices, Office of Legal Counsel, Second Circuit Court of Appeals (7/10)

Prosecutors and Their Disclosure Duties, American Bar Association Professional Responsibility

Annual Conference (6/10)

Litigating Under the New Ethics Rules: A Close Look at Rule 3.3 and Gender Bias in the Courthouse, New York Women's Bar Association (5/10)

*Update on Legal Ethics in Investigation*, National Employment Lawyers Association Spring Conference (5/10)

Ethical Issues with Blogging, Friending and Tweeting, Association of the Bar of the City of New York (3/10)

Ethical Issues in Criminal Defense Practice, 24th Annual Metropolitan New York Trainer (3/10)

Ethics for Corporate Counsel, New York State Bar Association Third Corporate Counsel Institute 11/09)

Ethical Implications of Open Source Strategies, Open Source Software, Practicing Law Institute (11/09)

The New New York Rules of Professional Conduct in Criminal Practice, Citibar Center for Continuing Legal Education (11/09)

Examining Modern Approaches to Prosecutorial Discretion, Keynote Address, Temple University Beasley School of Law Political and Civil Rights Law Review Annual Symposium (10/09)

Racial Issues, Confidentiality and Other Ethical Dilemmas, 2009 Annual Criminal Defense Conference, Milwaukee, Wisconsin (9/09)

Ethical Issues in Prison Actions, Prison Law 2009, Practicing Law Institute (9/09)

Ethical Issues in Special Education, Seventh Annual School Law Institute, Practicing Law Institute (5/09)

Past, Present and Future of Guantanamo, CSPAN (5/09)

Ethical Implications of Open Source Strategies, Open Source Software, Practicing Law Institute (11/08)

Confidentiality and Its Limits, Legal Ethics in New York, Lorman Educational Services, New York (9/08)

Ethical Issues in Client Representation at Guantanamo, Association of Professional Responsibility Lawyers (5/08)

The Prosecution Ethic, Symposium in Tribute to Seattle-King County Prosecutor Norm Maleng,

Seattle Washington (5/08)

The Bi-Annual Criminal Justice Retreat: A Summit on the Prosecution Function, Association of the Bar of the City of New York (4/08)

Ethical Issues in Direct and Cross Examination, American Bar Association Criminal Justice Section (4/08)

Ethical Issues in Witness Preparation, Commercial and Federal Litigation Section, New York State Bar Association (1/08)

What Every Attorney Must Know About Ethics, Practicing Law Institute (12/07)

Ethics and Professionalism in Plea Negotiation: Best Practices and Worst Pitfalls, American Bar Association Criminal Justice Section 2007 Fall Conference, Washington, D.C. (11/07)

Business and Ethical Implications of Open Source Strategies, Open Source Software, Practicing Law Institute (11/07)

Confidentiality and Conflicts, Back to Business, Proskauer Rose LLP (11/07)

Lawyering and Terrorism Cases, Legal Dilemmas in a Dangerous World: Law Terrorism and National Security, Roger Williams University School of Law (11/07)

Lawyering at the Edge of the Rule of Law, Ethics Conference: Lawyering at the Edge, Hofstra Law School (10/07)

Ethics in Employment Law, Jackson Lewis Women's Employment Law Conference, New Jersey (10/07)

Zealous Representation: Ethical Limits and Trial Techniques, New York State Bar Association (5/07)

Ethical Practices in Start-Ups and Smaller Firms, Association of the Bar of the City of New York (5/07)

Ethics for the Immigration Lawyer, Federal Bar Association, New Jersey 26<sup>th</sup> Annual Hon. William H. Strasser Immigration Conference (5/07)

Ethical Issues in Special Education, Fifth Annual School Law Institute, Practicing Law Institute (5/07)

Potential Criminal Exposure of Attorneys, Professional Responsibility and Risk Management Conference, New York (10/06)

Attorney-Client Privilege, Inadvertent Disclosure and Document Retention, Jackson Lewis

Women's Employment Law Conference, New Jersey (10/06)

Ethical Issues for Intellectual Property Lawyers, The Copyright Society of the USA, New York (9/06)

Ethical Issues in Advising the Self Represented, New York Family Court (9/06)

Ethical Issues for the Entertainment Lawyer, Association of the Bar of the City of New York Center for Continuing Legal Education (6/06)

Prosecution Ethics, American Bar Association Professional Responsibility Conference, Vancouver, B.C. (6/06)

Ethical Issues for Employment Lawyers, National Employment Lawyers Association (5/06)

Ethical Issues in Special Education, Sixth Annual School Law Institute, Practicing Law Institute (5/06)

Lawyers in the Dock: When Does Good Lawyering Become Criminal Conduct, Association of the Bar of the City of New York Center for Continuing Legal Education (2/06)

*Prosecution Ethics*, Association of Professional Responsibility Lawyers (2/06)

The Law and Ethics of Criminal Defense in Terrorism Cases, Association of American Law Schools (1/06)

Bridge the Gap, Practicing Law Institute (12/05)

Secret Evidence is Eroding the Adversary System, Lawyers' Ethics in an Adversary System, 2005 Legal Ethics Conference, Hofstra Law School (11/05)

The Changing Legal Profession, Legal Ethics in the New Millennium, American Association of Law Schools Professional Responsibility Conference (6/05)

Ethical Issues in Special Education, Fifth Annual School Law Institute, Practicing Law Institute (4//05)

Ethical Issues in Pro Bono Work, City Bar Center for Continuing Legal Education (6/05)

Ethical Dilemmas for Financial Services Attorneys, SIA Compliance and Legal Division (6/05)

Ethics for the Immigration Lawyer, City Bar Center for Continuing Legal Education (3/05)

Ethical Considerations for Corporate Investigations, City Bar Center for Continuing Legal Education (9/04)

Timely Ethical Issues: Cooperating Witnesses, Federal Bar Council (11/04)

Ethical Issues for the Entertainment Lawyer, City Bar Center for Continuing Legal Education (6/04)

Ethics for the Immigration Lawyer, City Bar Center for Continuing Legal Education (3/04)

Ethical Issues in Dealing with the Difficult Client, New York Employment Lawyers Annual Conference (11/03)

Internet Ethics, New York County Lawyers Association (10/03)

The Evolving Defense Function in the Wake of Sarbanes-Oxley, New York Council of Defense Lawyers 2003 Biennial Retreat, with SEC Commissioner Harvey Goldschmid, SDNY Judge Jed Rakoff and New York State Attorney General Eliot Spitzer (10/03)

Child Abuse, Neglect & the Foster Care System - The Attorney's Role & Responsibilities 2003, Practicing Law Institute (3/03)

### LEGAL EMPLOYMENT

Ethics Consultant 2008-

Present

Advise and represent lawyers and judges on matters pertaining to the law governing lawyers; expert witness.

#### Clayman and Rosenberg, New York, NY

2006 - 2008

Of Counsel

Advised and represented lawyers and legal organizations on matters pertaining to the law governing lawyers; expert witness.

## Hinshaw & Culbertson LLP, New York, NY

2004 -

2006

Of Counsel

Advised and represented lawyers and legal organizations on matters pertaining to the law governing lawyers; expert witness

### Private Practice, New York, NY

1988 - 2000

Criminal, civil rights and constitutional rights litigation

#### Center for Constitutional Rights, New York, NY

1982 - 1988

National practice in civil rights and international human rights

Criminal defense and civil rights litigation	1980 - 1982
Seattle-King County Public Defender, Seattle, WA Criminal defense litigation	1976 - 1980
Puyallup Indian Tribe, Tacoma, WA Staff Attorney Provided general legal counsel to tribe on land rights and economic development.	1975 - 1976

# **BAR ADMISSIONS**

New York and Washington State Courts Various U.S. District Courts Second and Ninth Circuit Courts of Appeals U.S. Supreme Court

<b>EDUCATION</b>		
Rutgers School of Law, Newark, New Jersey	J.D. 1975	
Douglass College for Women Rutgers University, New Brunswick, New Jersey	B.A. 1969	
<u>HONORS</u>		
Founders Award Center for Constitutional Rights	May 2018	
Outstanding Women in Law 2018  Maurice A. Deane School of Law at Hofstra University	May 2018	
Hofstra Law Review Professor of the Year Maurice A. Deane School of Law at Hofstra University	May 2017	
Eric Neisser Award for Outstanding Public Service Rutgers University School of Law	Sept 2005	
Outstanding Contribution in the Field of Criminal Law Education Award New York State Bar Association, Criminal Justice Section	Jan 2000	

Monrad G. Paulsen Award (with other members of the clinical faculty) Benjamin N. Cardozo School of Law at Yeshiva University	June 1998
Jack Wasserman Memorial Award American Immigration Lawyers Association Award	June 1991
Steps to End Family Violence Award Edwin Gould Services	May 1991